1-1302-8118-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF TEACHING
AND THE STATE BOARD OF EDUCATION

In the Matter of the Proposed
Revocation of the Teaching
Licenses of Elwyn S. Brown

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

The above captioned matter came on for hearing before Administrative Law Judge George A. Beck at 10:00 a.m. on Wednesday, September 15, 1993, in Courtroom No. 3 of the Office of Administrative Hearings, 100 Washington Square, 17th Floor, in the City of Minneapolis, Minnesota. The record closed on November 24, 1993 upon receipt of the final written memorandum.

Nancy Joyer, Special Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the staff of the Minnesota Board of Teaching and the State Board of Education. Tristam O. Hage, Attorney at Law, 520 East Parkdale Plaza, 1660 Highway 100 South, Minneapolis, Minnesota 55416-1534, appeared representing the Licensee, Elwyn S. Brown.

This Report is a recommendation, not a final decision. The Minnesota Board of Teaching and the State Board of Education will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Minnesota Board of Teaching and the State Board of Education shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Minnesota Board of Teaching and the State Board of Education. Parties should contact Judith A. Wain, Executive Secretary, Minnesota Board of Teaching, Room 608, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, and Marsha Grunseth, Executive Director, State Board of Education, Room 714, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The first issue in this contested case proceeding is whether

or not the Licensee has demonstrated an immoral character or has engaged in immoral conduct based upon incidents which occurred on November 17, 1988 and January 28, 1991.

The second issue is whether or not the Licensee violated the Code of Ethics for Minnesota teachers by failing to make a reasonable effort to protect a student from conditions harmful to health or safety and/or failing to undertake reasonable disciplinary action in exercising authority to provide an atmosphere conducive to learning on November 17, 1988 and January 29, 1991.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Elwyn S. Brown is licensed by the Board of Teaching and holds three licenses under the jurisdiction of the Minnesota Board of Teaching: a license in Social Studies K-12, a license in physical education 7-12, and Communications Disorder Pre-K-12. (T. 165.) He also holds a coaching license K-12 issued under the jurisdiction of the State Board of Education. (T. 166.) All four licenses will expire June 30, 1995. (T. 166.) Mr. Brown has been married for 33 years and has five children ranging in ages from 22 to 14. (T. 132.)

2. In 1965, Mr. Brown obtained a bachelor's degree in education with a major in social studies and a minor in physical education from Bemidji State University. (T. 138.) He taught social studies for one year in Allendale, Minnesota, and world history for two years in Clio, Michigan. (T. 138.) He taught in St. Louis, Michigan for one year. Mr. Brown was not rehired and he and his spouse returned to Minnesota. (T. 139.) In 1972, Mr. Brown obtained a bachelor's degree in speech and pathology. (T. 137.)

3. In September of 1972, after obtaining his speech and pathology degree, Mr. Brown obtained a part-time position with Chosen Valley Public Schools working two days a week at Chatfield Elementary School and three days a week at the adjoining school district in Lanesboro. In 1987, Lanesboro cut its hours for Mr. Brown's position and Chatfield was seeking a full-time speech and language teacher. Mr. Brown applied for that position and he believed that the District Superintendent, J. Ronald Hennings, did not want to offer him the position because of Mr. Brown's religious beliefs. Mr. Brown testified that Mr. Henning's position was told to him by the Chatfield Elementary school principal, Mr. Thomas. (T. 157.) In the summer of 1987, Mr. Brown filed a complaint with the Human Rights Department and the Equal Employment Opportunity Commission alleging religious discrimination. (T. 157-158, 173.) Mr. Brown was later employed full-time by Chatfield Elementary school. (T. 180.)

4. Mr. Brown taught in the Chosen Valley Public Schools for 16 years prior to the 1988/89 school year. During that school year, Mr. Brown taught speech and language to children ranging from preschool level to junior high level. The students came to Mr. Brown's classroom where he provided lessons with a low student to teacher ratio. On November 17, 1988, Mr. Brown had a class comprised of two students. One student was an eight year old boy, B.A., who had learning disabilities. (T. 140.) The two students arrived approximately five minutes late to class which frustrated Mr. Brown because it shortened their class time. (Ex. 12 p. 2.)

B.A. was talking and playing with items while Mr. Brown tried to start working on vocabulary. Mr. Brown lost his temper and slapped B.A. in the face. (Ex. 12 p. 2, T. 141.) B.A. whimpered and put his head down on the table for a period of time. (Ex. 12, p. 2.) Mr. Brown did not discuss the incident with anyone until the following day when the principal, William Thomas, asked him about the incident. (Exs. 9 and 12 p.2.) B.A.'s parents called the principal the evening of November 17th to report that their son had been slapped in the face by Mr. Brown and that when he came home from school he had marks on the left side of his face. (Ex. 9.)

5. Mr. Brown admitted slapping B.A. when asked about the incident by Mr. Thomas, the school principal. (Ex. 9). However, he denied hitting him hard enough to cause marks on B.A.'s face. (Ex. 9.) On November 22, 1988, J. Ronald Hennings, the Superintendent of Chosen Valley Public Schools, wrote a letter to Mr. Brown stating that:

> * * * you are hereby notified that the Chosen Public Schools will not tolerate improper physical contact, including the striking of a child, for disciplinary reasons on the part of any employee. In the event it is determined that you have in the past struck or had improper physical conduct with a student of this school in addition to the November 17th incident or should you be involved in future incidences of this nature, you may be considered for immediate discharge.

(Ex. 10.)

Mr. Brown was given a copy of the letter on November 22, 1988, however he declined to acknowledge receipt of the document. (Ex. 10, T. 47.) Mr. Brown did not deny that he had received the document.

6. On November 28, 1988, Mr. Brown was given written notice that his classroom door needed to be open at all times when working with students. (Ex. 11, T. 141.) Mr. Brown believed that provision would only be in place for one school year. (T. 142.) In the Fall of 1989, 1990 and 1991, Mr. Brown was not

asked by Mr. Thomas, or Jeffrey Miller, Mr. Thomas' successor as principal, to keep his classroom door open. (T. 62, 143.) Mr. Brown kept his classroom door closed from the 1989-1990 school year forward. (T. 143.)

7. During the 1990/91 school year, Mr. Brown taught speech and language at Chatfield Elementary to students ranging in grades from preschool to junior high. He typically taught students on a one to one basis and they typically had speech and reading difficulties. Some of the children suffered from learning disabilities. Each teaching session would last approximately 20 minutes and would occur on a daily basis.

8. C.M., an eight year old first grade male student, was one of Mr. Brown's students during the 1990/91 school year. C.M. has been diagnosed as having learning disabilities. He had a very low vocabulary, difficulty with articulation, and a language disorder. (T. 147.) C.M.'s articulation had improved by the 1990/91 school year, but was still deficient. (T. 147.)

C.M. also was alleged to have a hearing disorder. (T. 147.) He spent 20 minutes daily with Mr. Brown on a one to one basis at 2:00 p.m. each day. C.M. had also been one of Mr. Brown's students during the 1989/90 school year.

9. On January 28, 1991, at approximately 2:00 p.m., C.M. came to Mr. Brown's class. The previous student left and C.M. remained in the doorway. C.M. told Mr. Brown that he was not going to work that day. Mr. Brown then told C.M. that if he was not going to work that he was going to throw him out the window. Mr. Brown picked up C.M. by grabbing him by the shoulder and one leg and then put C.M. on his head. Mr. Brown walked 10 to 15 feet toward the second story window. C.M. cried and Mr. Brown put him down. (T. 151, 171.)

10. Mr. Brown and C.M. then proceeded to work on the assignment for that day. At the end of the 20 minute session, C.M. returned to his first grade classroom. Soon thereafter, between 2:30 and 2:45 p.m., his teacher, Iva Anderson, brought him to the school counselor, Sara Fenwick-Duxbury, requesting that the counselor speak to C.M. C.M. was bright red in the face, crying and trying to talk really fast. (T. 18.) The school counselor recorded C.M.'s statements which were:

> He hit me and was going to throw me out the window because I was supposed to do something. He put me on his head and he opened up the window and he was going to throw me out. I said I was going to go and he did that.

(Ex. 1. and Ex. 1A.)

11. The school principal filed a report of suspected child abuse/neglect with Fillmore County Social Services based upon the January 28, 1991 incident. (Ex. 2).

12. On Tuesday, January 29, 1991, the principal, Jeffrey Miller, and the District Superintendent, J. Ronald Hennings, met with Mr. Brown to put him on notice that the report prepared by Sara Fenwick-Duxbury would be placed into his personnel file. (T. 37-38.) A copy of the report was given to Mr. Brown at that time. (T. 38.) Mr. Brown admitted that he grabbed C.M., took him to the classroom window, and told him he was going to throw him out the window. Mr. Brown denied that he hit C.M. (T. 38, Ex. 3.)

13 On January 30, 1991, Mr. Brown was notified in writing that effective immediately he was suspended from his teaching assignment with pay. (Ex. 4.) On March 5, 1991, Mr. Brown sent written notice that he was resigning from his teaching position with the Independent School District No. 227(Chosen Valley Public Schools) effective the end of the 1990/91 school year. (Ex. 5.) His resignation was accepted by the School Board on March 5, 1991. (Ex. 6 p. 4 and Ex. 7.)

14. On January 30, 1991, C.M. was interviewed by Investigator Daryl Jensen and Fillmore County Social Worker, Wendy Ebner. The interview was recorded and later transcribed. (Ex. 21.) On page three of the transcribed report, C.M. states that Mr. Brown hit him in the shoulder area with a fist. (Ex. 21 pp. 2-3.) C.M. stated that Mr. Brown picked him up and was laughing while he carried C.M. (Ex. 21 p. 4.)

15. On April 17, 1991, Mr. Brown saw Dr. Samuel Fink, Ph.D., a licensed consulting psychologist, for a diagnostic assessment. (Ex. 16.) Mr. Brown had been charged criminally in connection with the January 28, 1991 incident. The assessment was conducted as part of a negotiated agreement in the criminal proceedings. Mr. Brown saw Dr. Fink for four sessions on a monthly basis from April 7, 1991 through September 1991. (Exs. 17-19.) Dr. Fink concluded that Mr. Brown demonstrated minimal insight and believed his lost job was primarily based on his religious practices. (Ex. 19.) Mr. Brown did admit that his behavior on January 28, 1991, was inappropriate by today's standards, but also indicated he did not agree with such standards. (Ex. 19.) At the hearing, Mr. Brown denied that he did not agree with today's standards. (T. 169.)

16. On May 26, 1992, a hearing in the criminal proceeding took place in the chambers of the Honorable Duane M. Peterson, Judge of District Court. Dr. Samuel Fink testified via telephone conference call. (Ex. 20.) Dr. Fink testified that Mr. Brown had not been motivated to go through extensive counselling sessions. (Ex. 20 p. 3 and 8.) Dr. Fink further testified that Mr. Brown had limited insight into his problems. (Ex. p.4.)

17. During the 1991/92 school year, Mr. Brown taught at a school in Wisconsin. (T. 164.) Part of the agreement in the criminal proceeding was that Mr. Brown would not teach in any position requiring a Minnesota teaching license as a condition of employment until July 1, 1995. Ex. 14.) He is presently employed by Bailey's Nursery.

18. The exhibits received during the hearing contain references to
B.A.'s and C.M.' s full name.

Based upon the foregoing Findings of Fact, the Administrative law judge makes the following:

CONCLUSIONS

1. The Minnesota Board of Teaching and the State Board of Education and the Administrative law Judge have jurisdiction in this matter under Minn. Stat. 125.09, subd. 1 and 14.50.

2. The Boards have complied with all relevant, substantive, and procedural requirements of statute and rule.

3. The Licensee received proper and timely notice of the hearing in this matter.

4. Minn. Stat. 125.09, subd. 1 provides in part as follows:

> The board of teaching or the state board of education, whichever has jurisdiction over a teacher's licensure, may, on the written complaint of the board employing a teacher, or of a teacher's organization, or of any other interested person, which complaint shall specify the nature and character of the charges, suspend or revoke such teacher's license to teach for any of the following causes;
>
> (1) Immoral character or conduct;
>
> * * *

5. Minnesota Rules 8700.7500, subp. 2, sets forth the standards of professional conduct for all persons licensed according to the rules established by the Board of Teaching:

> * * *
>
> B. A teacher shall make reasonable effort to protect the student from conditions harmful to health and safety.* * *
>
> D. A teacher shall take reasonable disciplinary action in exercising the authority to provide an atmosphere

conducive
to learning. * * *

6. Minnesota Rules 8700.7500, subp. 3 provides the board with the authority to enforce the code of ethics for Minnesota teachers.

7. That the Boards' staff have the burden of proof to establish the facts at issue by a preponderance of the evidence under Minn. Rule 1400.7300, subp. 5.

8. That the Boards' staff have proved by a preponderance of the evidence that the Licensee slapped an eight year old student, B.A., in 1988 as set forth in Finding Nos. 4 and 5.

9. That the Boards' staff have proved by a preponderance of the evidence that the Licensee threatened to throw C.M., an eight year old student with learning disabilities, out the classroom window, and then grabbed C.M. by the shoulder and arm, picked him up placing him on the Licensee's head, and carried the student to the second story classroom window as set forth in Findings Nos. 8 - 14.

10. That the Boards' staff have not proved by a preponderance of the evidence that the Licensee has engaged in immoral conduct contrary to Minn. Stat. 125.09, subd. 1.

11. That the Boards' staff have proved by a preponderance of the evidence that the Licensee has violated the code of ethics for Minnesota teachers by failing to protect his students from conditions harmful to health and safety.

12. That the Boards' staff have proved by a preponderance of the evidence that the licensee has violated the code of ethics for Minnesota teachers by failing to take reasonable disciplinary action in exercising the authority to provide an atmosphere conducive to learning.

13. That the entire file shall be sealed to protect the identities of B.A. and C.M.

14. That the above conclusions are arrived at for the reasons set out in the Memorandum which follows and is hereby incorporated in these conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board of Teaching and the State Board of Education take disciplinary action against the

teaching licenses of Elwyn S. Brown.

Dated

/s/ George A. Beck

GEORGE A. BECK
Administrative law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd.. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Transcript prepared by Jeffrey J. Watczak

MEMORANDUM

The Executive Secretary of the Board of Teaching and the State Board of Education initiated this contested case proceeding alleging that the Licensee, Elwyn S. Brown, has engaged in conduct which violates the Code of Ethics for Minnesota teachers. In addition, the Board of Teaching and the State Board of Education allege that the Licensee has engaged in immoral conduct which justifies disciplinary action against his teaching license.

As set forth in the foregoing Findings of Fact, on November 17, 1988,
the Licensee slapped an eight year old student who had learning disabilities. The Licensee admitted that he lost his temper and slapped his student. On November 28, 1988, the Licensee was given written notice that any future incidents involving inappropriate physical contact with his students may lead to dismissal. On January 28, 1991, the Licensee responded to a student's refusal to work by picking up the student by the shoulder and leg and carrying him near the classroom window stating that if he did not work he was going to throw him out the window. When the student began to cry, the Licensee put the student down.

At the hearing, the Licensee did not dispute hitting the student in November of 1988. He testified that the student was being disruptive in the classroom and that he lost his temper. He maintained that he did not hit him hard. This testimony is directly contradicted by the statement from the parents that their son came home with a red mark on his face. Regarding the January 1991 incident, the Licensee testified that he was acting in jest in an attempt to refocus the student's attention to the class work. The Licensee also testified that the student cried.

In reviewing the statements made by the student directly after the incident, and the testimony of the counselor who observed that C.M. was visibly upset shortly after the incident, the Licensee's testimony discounting the incident as being in jest is not credible.

It is the Board's position that the 1988 incident violated the Code of Ethics for Minnesota teachers. They assert that no evidence was presented that the Licensee's act of slapping was necessary to protect the student from harming himself or others. The Boards also assert that the act constituted unreasonable disciplinary conduct. The Licensee was warned by the District not to engage in future improper physical action against a student. Based upon the Licensee's failure to heed the warning of the District by engaging in inappropriate physical contact with a student a second time, the Board initiated this action to revoke Brown's license. The Board's concern is heightened by the fact that Brown's licenses enable him to work in unsupervised sessions with young students with special needs.

The Boards further assert that Brown's conduct constituted immoral conduct or character in violation of Minn. Stat. 125.09, subd. 1(1). The Boards submit that placing vulnerable children at physical risk constitutes immoral conduct.

It is the Licensee's position that the 1988 incident was unfortunate, but did not reach the level of a breach of the code of ethics. The Licensee rationalizes the act as an instinctive reaction to a student exhibiting disruptive behavior. Additionally, the Licensee asserts that the Boards have no authority to consider the 1988 incident in this proceeding because the time period in which his fitness as a teacher was being scrutinized had expired. The Licensee bases his position on the fact that he was directed to keep his classroom door open when he was working with students. After the end of one school year, he closed his door and no discussions were held requesting that the door remain open. Regarding the 1991 incident, it is the Licensee's position that he acted in jest. He further alleges that the court should take into consideration that no evidence was presented that the student suffered from any long term behavioral changes after the incident. Brown asserts that his alleged inappropriate conduct does not violate morality standards and hence, is not immoral conduct under Minn. Stat. 125.09, subd. 1(1).

The Minnesota Code of Ethics for teachers provides that:

> B. A teacher shall make reasonable efforts to protect the student from conditions harmful to health and safety.
>
> D. A teacher shall take reasonable disciplinary action in exercising the authority to provide an atmosphere conducive to learning.

Minnesota Rules 8700.7500 subp. 2.

Brown's actions in 1988 and 1991 violated both of the codes set forth above. By slapping a student in anger in November of 1988, Brown failed to protect his student from conditions harmful to health and safety.

No evidence was presented that the act was necessary to protect the student from harming himself or others. On the contrary, his act in slapping a student created a harmful condition. Brown's conduct was not reasonable disciplinary action necessary to provide an atmosphere conducive to learning.
Brown alleges that the student was being disruptive in the classroom. However, the student was only eight years old and suffered from learning disabilities. Further, only five minutes had elapsed from the beginning of the class to the slapping incident. Additionally, only two students were in the class. Slapping out of anger constitutes unreasonable disciplinary action, especially considering the vulnerability of the child due to his age and learning disabilities.

The Licensee's argument that the 1988 incident should not be considered is without merit. Even if the District's requirement that Brown keep his door open while working with students expired after the 1988/89 school year, the November 22, 1988 letter placing Brown on notice that future incidents involving impoper physical conduct with students would not be tolerated had no expiration date. Jeffrey Miller testified that such a warning would not have an expiration date. (T. p. 68.)

In evaluating the 1991 incident, the Judge did not give great weight to the hearsay testimony and exhibits which allege that Brown struck C.M. Upon review of C.M.'s statement, Exhibit 21, it is possible that Brown hit C.M. in the shoulder prior to or while he was picking C.M. up by the shoulder. However, Brown testified that he did not hit C.M. and that C.M. sometimes stated that he was hit when he was actually doing the hitting. There is not a preponderance of evidence establishing that Brown hit C.M. on January 28, 1991.

However, Brown's act in 1991 was not necessary to protect his student from conditions harmful to health and safety. On the contrary, carrying a student on top of his head toward a second story window created a condition harmful to the student's health and safety. Threatening to throw a student out a second story window unless he did his work was not reasonable disciplinary action. Brown's act was exacerbated by the student's young age and learning disability problems. Both students were very vulnerable.

The third issue presented was whether or not Brown's actions in 1988 and 1991 constituted immoral conduct pursuant to Minn. Stat. 125.09 subd. 1. (1). The statute does not define the

phrase "immoral conduct" and there is no Minnesota case law which specifically construes the phrase. The Minnesota appellate court has upheld dismissals of licensed teachers for immoral conduct relating to sexual contact or sexual harassment of students. See Fisher v. I.S.D. No. 622, 357 N.W. 2d 152 (Minn. Ct. App. 1984). However, there are no Minnesota appellate cases interpreting the statute when the act is not sexually motivated.

The Boards cite a Nebraska decision to support their position that Brown's actions constitute immoral conduct. Clarke v. Board of Education of the School District of Omaha, 215 Neb. 250, 338 N.W. 2d 272 (1983). The Nebraska Supreme Court had to determine whether or not a teacher's use of racial slurs to a a racially mixed class of students constituted "immorality" to support immediate termination of a teacher.

The Nebraska statute did not define the phrase "immorality". The Court carefully limited its holding to the facts in that particular case. The Court considered the fact that the school was under a court order to desegregate and that the District had formally adopted a policy statement stating that racially demeaning language would not be tolerated and could result in termination of duty. Clarke, 338 N.W.2d at 275. The Court focused on the racial tensions in the school and noted that by using derogatory language the teacher was teaching white students that it was acceptable to use racial slurs toward Afro-Americans. Id. at 275.

The court quoted a definition adopted by other courts:

> The term "immoral" has been defined generally as that which is hostile to the welfare or the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

Clarke, 338 N.W.2d. at 276, citing Palo Verde etc. School District v. Hensey, 9 Cal. App. 3d 967, 972, 88 Cal. Rptr. 570, 573 (1970).

The Nebraska Supreme Court found that a teacher's use of

racial slurs in a classroom setting offended the morals of the community and directly affected his fitness to teach. Clarke, 338 N.W. 2d at 277-278. While the definition in Clarke was expansive, the Court was careful to note that its decision was based on the specific facts presented and that future cases would have to be decided on a case by case basis. The Court's opinion focused on the need to eradicate racism from society, and that such slurs would not be tolerated in a classroom setting, especially given the racial tensions in the District where the slurs occurred.

In the California decision cited in Clarke, the appellate court found that a nonverbal gesture by the teacher was obscene and rose to the level of immorality. Palo Verde, 88 Ca. Rptr. at. 575 The appellate court also found that disconnecting a fire alarm in a classroom which potentially endangered the safety of students did not rise to the level of immorality. Id. at 574.

The Boards also cite a Pennsylvania decision in support of their position that Brown's acts constituted immoral conduct under Minn. Stat. 125.09 subd. 1 (1). Horosko v. Mt. Pleasant Township, School District, 355 Pa. 369, 372, 6 A.2d 866 (1939). In that decision, the Pennsylvania Supreme Court defined the term immorality in connection with a teacher dismissal proceeding as follows :

> We hold it to be self evident that, under the intent and meaning of the act, immorality is not essentially confined to a deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate. Id. at 868.

In that case, the teacher was a waitress at her husband's lunch room and beer garden. In front of students that she tutored, the teacher drank beer, played dice and showed a customer how to play a pin-ball machine. In 1939, such conduct rose to the level of immorality. Id. at 869.

Brown's course of conduct was reprehensible and violated the Code of Ethics for teachers, however, his actions did not rise to the level of offending the morals of the community based upon the case law cited. Although the two cases discussed above have broad definitions of immorality, they specifically involve sexual conduct and racially demeaning language. No authority has been advanced to support the conclusion that striking a student is included within the definition of immorality or immoral conduct. Although the Boards mention that the Licensee's conduct is as serious as that cited in the case law, it is of a different nature, and is probably not violative of the ordinary dictionary meaning of "immoral". Accordingly, the Boards have not established beyond a preponderance of the evidence that Brown committed immoral conduct under Minn. Stat. 125.09 subd. 1(1).

At the hearing, the Boards called Gary Schoener, a licensed psychologist, to testify regarding Brown's psychological evaluation and the adequecy of the treatment he received for anger management The parties stipulated to his qualifications as an expert for purposes of his testimony. (T. p. 80.) Mr. Schoener examined the psychological records and evaluation conducted by Dr. Samuel Fink regarding the licensee.

Mr. Schoener testified that Dr. Fink concluded that Brown had a problem and recommended a treatment plan to deal with difficulties in controlling his angry impulses. He testified that Dr. Fink diagnosed Brown as having a personality disorder. Mr. Schoener testified that a personality disorder is a serious emotional problem. Mr. Schoener testified that Dr. Fink's notes also indicated that Brown has paranoid narcissistic and possibly schizotypical personality features. Mr. Schoener testified that Brown's disorder is difficult to treat.

Mr. Schoener testified that in reviewing the file, he noted that Dr. Fink would have preferred to have engaged in weekly counseling. However, Brown was resistant to counseling and they agreed to four monthly sessions. Mr. Schoener testified that the file reflects that the results of the treatment program was a recognition by Brown that his behavior was not acceptable by current standards. Mr. Schoener testified that the notes reflect that Brown showed limited insight into his anger control problems. Mr. Schoener testified that Brown's lack of insight makes it extremely difficult if not impossible to treat Brown's problems. Mr. Schoener testified that, in his opinion, Brown's sessions with Dr. Fink would not have successfully modified or solved Brown's problem with anger.

Based upon Mr. Schoener's review of the psychological records, the school records, and the telephone transcript in the criminal proceeding regarding completion of treatment, and based upon his professional experience, Mr. Schoener testified that he believed there is a risk that Brown will repeat some of these behaviors.

Although Administrative Law Judges do not recommend specific disciplinary action in occupational licensing cases, Mr. Schoener's credible expert testimony should be helpful to the Boards in determining the appropriate disciplinary action in this proceeding.